IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

CRP.No. 2009 of 2003

AGAINST THE ORDER DATED 04/07/2003 IN EP.NO. 415/2002 IN OS.20/1988 of MUNSIFF COURT, OTTAPPALAM

REVN. PETITIONERS: DECREE HOLDERS:

1. SHEELA, D/O. SANTHAKUMARI,
   CHENTHRATHIL HOUSE, KARALMANNA AMSOM,
   NADUVATTOM DESOM, OTTAPALAM TALUK.

2. RAJESH, S/O. DO. DO.
   (IN THE LOWER COURT ORDER, 1ST PETITIONER'S NAME WRONGLY SHOWN AS SANTHAKUMARI, D/O. SANTHAKUMARI INSTEAD OF SHEELA, D/O. SANTHAKUMARI).

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENT: JUDGMENT DEBTOR:

MURALEEDHARAN, S/O. NECHIKKOTT
KURUMBAN EZHUTHASSAN, KARALMANNA AMSOM,
VADAKKUMURI DESOM, OTTAPALAM TALUK.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

C.R.P. NO. 2009 OF 2003

Dated this the 6th day of July, 2007

O R D E R

The question arising for consideration in this revision is whether minors in whose favour decree for maintenance was passed would be entitled to execute the decree within twelve years of the respective period for which maintenance is due or whether they should file the execution petition before the expiry of three years of their attaining majority as provided in Section 8 of the Limitation Act.

2. The petitioners herein are the decree holders. The suit was filed for maintenance. Decree was passed on 31.8.1989. It was a compromise decree. Rs.75/- per month was allowed to both the petitioners as maintenance. The first petitioner, Sheela, attained majority on 22.12.1996. The second petitioner, Rajesh, attained majority on 18.6.1998. The execution petition was filed on 20.11.2002 for realisation of maintenance from 20.1.1988 to November 2002. Before the executing court, the respondent/judgment debtor contended that the execution petition is barred by limitation. It was also contended by him that Sheela was married and, therefore, she is not entitled for maintenance. The date of marriage is not mentioned by either party. The court below accepted the contention raised by the judgment debtor

and held that since the execution petition was filed beyond three years of the attainment of majority by the minors, the execution petition is barred by limitation.

3. Section 6(1) of the Limitation Act provides that where a person entitled to institute a suit or make an application for the execution of a decree, is at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule. Section 8 of the Limitation Act is in the nature of an exception to Sections 6 and 7. Section 8 provides that nothing in Section 6 or in Section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application.

4. The scope and ambit of Section 6 read with Section 8 came up for consideration in **Indira Pillai** v. **Kesavan Channar** (1968 KLT 673 (FB)). It was held by the Full Bench that what Section 6 of the Limitation Act has done is not to give a fresh

starting point of limitation, but to extend the period of limitation prescribed in the First Schedule. Section 6 does not prevent the running of time as against a person under disability. Section 6 only means that the person under disability is entitled to an extension of time till the expiry of the period mentioned in the schedule calculated from the cessation of his disability (subject to the limitation mentioned in Section 8).

5. The question is whether in view of Section 8 of the Limitation Act, a minor, a person under disability, would be deprived of the entitlement to make an application for execution within the same period which he would have been entitled to had he been not a person under disability. If the proposition as accepted by the court below is accepted, a minor in whose favour a decree was passed would get only a period of three years to file the execution petition after attainment of majority. This, according to me, is not a correct proposition. If the minor is otherwise entitled to a larger period under the law of limitation than the period of three years as provided in Section 8 of the Act, the minor would not be deprived of that benefit which he would otherwise be entitled to. If it were not so, it could not be said that what is provided in Section 6 is a benefit to a person under

disability; on the other hand, it would be a disability which is created by Section 6. Take for example, a decree is passed on 1.1.1990 in favour of a minor and on the same date a decree is passed in favour of a person who is not a minor. The major decree holder would be entitled to file execution petition on or before 1.1.2002 under Article 136 of the Limitation Act. In the given case if the minor attains majority in 1992 and the interpretation which is placed by the judgment debtor is to be accepted, the minor should file the execution petition in 1995, that is, within three years of his attaining majority. That would not be a benefit or protection as envisaged in Section 6 of the Limitation Act, but it would be a disability. This is not what is meant by Sections 6 and 8. The period of limitation which is available to a person is not defeated or taken away by operation of Sections 6 and 8. The period of limitation which would otherwise be available to a person, would be available to minors and persons under disability as well. In **Darshan Singh** v. **Gurudev Singh** (AIR 1995 SC 75), dealing with Sections 6, 7 and 8, the Supreme Court held thus:

> "In other words, S.8 is a proviso to S.6 or 7A combined effect of Ss.6 & 8 read with Third Column of the appropriate Article would be that a person

under disability may sue after cessation of disability within the same period as would otherwise be allowed from the time specified therefor, in the third column of the schedule but special limitation as an exception has been provided in S.8 laying down that extended period after cessation of the disability would not be beyond three years from the date of cessation of the disability or death of the disabled person. Take for instance, if a minor acquires a cause of action to sue for possession of immovable property but due to being minor, S.6 aids him to lay the suit within the same period of 12 years after attaining majority. Suppose he dies, his legal representatives would be entitled to lay the suit within three years from the date of his attaining majority though he may die after the expiry of three years since his right to file the suit is extended only up to three years from the date of his attaining majority. In other words, cessation of disability or death whichever occurs earlier. The date of death of disabled person does not provide further extended cause of action, a period beyond three years after the disability ceases and death. Take another instance, where a cause of action for possession has arisen when the minor was at the age of 16 years. On his attaining majority, he gets three years' period but Art.65, Column 3 gives him the right to file a suit within 12 years from the date the defendant acquires prescriptive title. His cessation of disability and expiry of three years under S.8 does not take away his right to file the suit within 12 years under Art.65. In other words, the benefit of S.6 is available to him. Take third case, where the cause of action had arisen to a minor when he was at the age of 4 years. During his minority, the 12 years' prescriptive period expired by efflux of time at his attaining 16 years but on his becoming major, his disability ceases. Therefore, he gets a further period of three years from the date of cessation of disability to file a suit for recovery of the possession from the defendant who claims adverse possession to the plaintiff. Thus

> considered that S.8 is a special exception to S.6 or 7 and the period of limitation though barred under S.3, remained available to persons under disability specified in S.6 or 7 and the right to lay the suit or application after disability ceased under S.6 or 7 is regulated by the limitation prescribed by S.8."

In **Moidu Haji** v. **Kunhabdulla and others** (1998 (2) KLT 691 = 1998(2) KLJ 241), it was held that in a suit in which Article 65 of the Limitation Act was applicable, the suit had to be instituted by the quondam minor within three years of his attaining majority or within twelve years of the transaction itself.

6. In the case on hand, the petitioners attained majority on 22.12.1996 and 18.6.1998. They could claim maintenance till they attained majority, even according to the judgment debtor. The first petitioner was entitled to get maintenance till the date of her marriage. The question is whether the petitioners could file the execution petition within twelve years from the date on which the maintenance was payable to them. In the case of the first petitioner, she was entitled to claim maintenance, even according to the respondent, up to 22.12.1996. The second petitioner was entitled to claim maintenance till 18.6.1998. For the maintenance due in 1996, for example, could not the first petitioner file the execution petition within twelve years thereof? Similarly, for the

maintenance payable up to 18.6.1998, could not the second petitioner file execution petition within twelve years of the respective dates on which maintenance fell due? Article 136 of the Limitation Act reads thus:

"Description of suit	Period of limitation	Time from which period begins to run.
136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place; Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."

A decree is executable when it becomes enforceable. A decree for maintenance become enforceable only when maintenance is payable. Maintenance is payable only when it is liable to be paid. A decree for maintenance cannot be executed in advance claiming advance maintenance. So the decree become executable only on the next day of the expiry of the month in which the monthly maintenance is actually payable. If so, an execution petition could be filed within twelve years of the respective months in which the maintenance was payable. Evidently, the execution petition was filed within twelve years during which the maintenance was payable to the petitioners. The court below was not justified in dismissing the application holding that it is barred by limitation. If the petitioners/minors could file the execution petition on attainment of majority for realising maintenance which fell due within twelve years before the date of filing of the execution petition, that right referable to Article 136 cannot be defeated by operation of Section 8 of the Limitation Act.

7. For the aforesaid reasons, I am of the view that the court below was not justified in dismissing the execution petition. The order passed by the court below is set aside and the

execution petition is remanded back to the court below for fresh disposal. Parties shall be at liberty to adduce further evidence on all aspects including the date on which marriage of the first petitioner took place. The executing court shall dispose of the execution petition in accordance with law and in the light of the findings rendered above.

The Civil Revision Petition is allowed as above.

(K.T.SANKARAN)
Judge

ahz/